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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. —

THE UNITED STATES

v.

THE SEMINOLE NATION

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims of the United States entered in this cause on December 2, 1935.

OPINION BELOW

The opinion of the Court of Claims was rendered December 2, 1935, but has not yet been reported.

JURISDICTION

The judgment of the Court of Claims was entered December 2, 1935. A motion for a new trial was made February 6, 1936, and was denied March 2, 1936. A second motion for a new trial was filed, with leave of the Court of Claims, on May 13, 1936, was orally argued June 1, 1936, and was denied June

8, 1936. The jurisdiction of this Court is invoked under Section 4 of the Act of May 20, 1924, c. 162, 43 Stat. 133, 134, and Section 3 (b) of the Act of February 13, 1925, c. 229, 43 Stat. 936, 939, U. S. C., Title 28, Sec. 288.

QUESTIONS PRESENTED

The principal questions presented are:

1. Whether the claims adjudicated by the Court of Claims were presented to it for decision in the time within which the United States had consented to be sued.

2. Whether Section 19 of the Curtis Act changed the purposes for which, and the persons to whom, moneys due under trusts and statutes relating to the Seminoles should be paid.

3. Whether a trustee who makes, at the request of his beneficiaries, payments to their agent, of which they do not deny receiving the benefit, is liable to pay these sums to the beneficiaries a second time.

TREATIES AND STATUTES INVOLVED

In the Appendix, *infra,* pp. 32 to 76, there are set forth, first, the statutes upon which the jurisdiction of the Court of Claims is based; next, the treaties with the Seminole Indians; then, in chronological order, the other statutes involved; and, finally, the relevant opinions of the Comptroller of the Treasury and of Assistant Attorney General Van Devanter.

STATEMENT

The Act of May 20, 1924, c. 162, 43 Stat. 133, as amended by the Act of Feb. 19, 1929, c. 268, 45 Stat. 1229, conferred upon the Court of Claims jurisdiction to adjudicate claims of the Seminole Indians against the United States growing out of treaties, agreements, or statutes of the United States, provided that suit was instituted by June 30, 1930 (Finding I).

On February 24, 1930, the Seminole Nation (hereinafter called the "Seminoles") filed in the Court of Claims a petition alleging that it "was the owner of large trust funds, held in trust by the defendant [the Government] for its use and benefit, and that there existed various treaties and agreements between said plaintiff and defendant whereby said trust funds were to be managed and invested by defendant, and the interest thereon paid over to the National Treasurer of plaintiff" (Petition, paragraph II); that after the Curtis Act, Act of June 28, 1898, c. 517, 30 Stat. 495, the Government impounded the funds, "refused to further pay them over to plaintiff's National Treasurer, and proceeded to disburse them for various purposes" (Petition, paragraph III); and that "from July 1st, 1898, until the present time, defendant, in violation of * * * the rights of plaintiff under its various treaties and agreements with defendant, and without authority of Congress,

has spent large sums of the trust funds" (Petition, paragraph VI). The petition prayed that "defendant be required to file in this cause a statement showing its expenditures of plaintiff's funds *during said period*" and that "plaintiff have judgment against the defendant in such sum or sums as appear to this court to be expended without authority of law" (Petition, paragraph VIII).

On September 19, 1934, the Seminoles filed an amended petition. In addition to repeating the earlier allegations of a wrongful expenditure between July 1, 1898, and the present time, of trust funds created by treaties and agreements, the amended petition presented for adjudication claims for failure to make payments due under trusts created by treaties, agreements, and statutes, both before and after 1898, and claims for failure to make miscellaneous payments due under treaties. These claims are so numerous that it will be convenient to state, first, the claims arising out of the trust funds and, then, the miscellaneous claims.

A. Trust Fund Claims

There were, in all, four trusts held by the Government for the benefit of the Seminole Nation:

> 1. A trust fund of $500,000 (originally two funds, each of $250,000), established by Article VIII of the Treaty of August 7, 1856, 11 Stat. 699, 702, upon which the Government agreed to pay annual interest of $25,000 (Finding III).

2. A trust fund of $70,000, established by Article III of the Treaty of March 21, 1866, 14 Stat. 755, 756–757, upon which the Government agreed to pay annual interest of $2,500 for "the support of schools" and annual interest of $1,000 for the support of the Seminole Government (Finding VIII).

3. A trust fund of $1,500,000, established by Section 12 of the Indian Appropriation Act for the fiscal year 1890, Act of March 2, 1889, c. 412, 25 Stat. 980, 1004, upon which Congress directed that there be paid annual interest of $75,000 to the Seminole tribal treasurer.

4. A trust fund of $500,000, which was originally part of the $1,500,000 just mentioned but which was "set apart as a permanent school fund" by the Seminole Agreement of December 16, 1897, ratified by Act of July 1, 1898, c. 542, 30 Stat. 567, 568 (second full paragraph on 568). $25,000 of the $75,000 mentioned in the preceding paragraph represents the annual interest on this trust fund (Opinion, Item 9).

The Seminoles claim that the Government has in various ways violated its fiduciary duties under each of these trusts. However, with respect to all of these trusts, in addition to the differing claims, one common claim is presented, which it will be convenient to state at once.

The common claim relates to the period from the fiscal year 1899 through the first half of the fiscal year 1907. During this period the Government,

under the four trusts just referred to, was obligated to pay annually interest, $25,000, plus $3,500, plus $75,000, or a total of $879,500 in 8½ years. The lower court found that for this period the Government did pay the Seminole tribal treasurer $864,702.58 (Finding XII; see also Finding IX). The court in effect held that after the passage of Section 19 of the Curtis Act, Act of June 28, 1898, c. 517, 30 Stat. 495, 502, the Government should have made these payments to the members of the Seminole Nation per capita, not to the tribal treasurer. The court thereupon adjudged that the Government was liable to the Seminoles for $864,702.58, the amount theretofore paid to the Seminole tribal treasurer—not $879,500, the amount promised (Opinion, Item 8).

In addition to this common claim, there are different claims with respect to each different trust.

With respect to the $500,000 trust established by the Treaty of 1856, the Seminoles claim that the Government, though it promised to pay $25,000 a year, made underpayments in 1867–1874, 1876, 1879, and 1907–1909. The lower court found that in each of those years there was an underpayment and, after tabulating those underpayments (Finding VI), concluded that the total shortage was $154,551.28 (Opinion, Item 3). The Government contended that against this apparent shortage there should be credited as offsets (a) the amounts by which in the years 1875, 1877, 1880, 1882, and

1883, the Government had overpaid the $25,000 promised; (b) the amounts paid in 1870 and 1874 at the request of the Council of the Seminole Nation; and (c) the amounts shown to have been expended in 1908, 1909, 1910, 1919, and 1921 for "Fulfilling Treaties with Florida Indians or Seminole Indians." The lower court refused to make findings as to, or to allow credits for, these offsets, on the ground that the Government had not formally filed a counterclaim. Instead the court held the Government liable for the full $154,551.28 (Opinion, Item 3).

With respect to the $70,000 trust fund established by the Treaty of 1866, the Government promised to pay $2,500 a year for "the support of schools." The Seminoles claim that in some years the Government made underpayments and in other years payments to the wrong person. Regarding underpayments, the lower court found (Finding IX) for the fiscal years 1867 to 1874, inclusive, that the Government paid $16,902.80 (or an underpayment of $3,097.20) and for the fiscal year 1907, $1,750 (or an underpayment of $750). The Government contended that against these apparent shortages there should be credited as offsets miscellaneous amounts, including particularly those shown by the General Accounting Office Report to have been expended in 1908, 1909, 1910, 1919, and 1921 for "Fulfilling Treaties with Florida Indians or Seminole Indians." The lower court, without

making any findings as to the Government's contention, and without giving any reasons for its omission, held the Government liable for underpayments of $3,097.20 and $750 (Opinion, Item 5). Regarding payments of this $2,500 annuity to the wrong person, the lower court found (Finding IX) that from the fiscal year 1875 to the fiscal year 1907, inclusive, the Government paid annuities directly to the Seminole tribal treasurer. The payments for the latter part of this period, from 1899 to 1907, have already been discussed (see the paragraph beginning at the bottom of page 5, *supra*) and are considered in the lower court's opinion, Item 8. The payments for the period from 1875 to 1898, inclusive, have not heretofore been discussed. The lower court held (Opinion, Item 5), that these payments from 1875 through 1898 should not have been made to the Seminole tribal treasurer but should have been disbursed by the Government itself for the support of schools. The lower court concluded (Opinion, Item 5), that the Government was liable for $57,500 (which apparently represents 23 instead of 24 years' payments at the rate of $2,500 a year).

With respect to the trust fund established by Section 12 of the Indian Appropriation Act of 1890, which originally amounted to $1,500,000, no claim is made other than the common claim already discussed at pages 5–6, *supra*.

With respect to the $500,000 trust fund set apart by the Seminole Agreement of 1897, the Seminoles

claim that the Government made unauthorized diversions of principal. The 1897 Agreement stipulated that the $500,000 "shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five percent interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government, applied by the Secretary of the Interior to the support of Mekasuky and Emahaka Academies and the district schools of the Seminole people" (Opinion, Item 9). The lower court found (Finding XIII) that the Government disbursed from the principal of this fund (a) for per capita payments, $25,744.50 in 1920 and $6,701.06 in 1921; (b) for equalization of allotments, $490.22 in 1921; and (c) for education, $17,743.43 in 1922, $16,679.86 in 1923, $247.94 in 1924, $6,504.72 in 1925, $12,809.52 in 1926, $17,815.59 in 1927, $19-685.35 in 1928, $1.29 in 1929, and $30,031.82 in 1930. The lower court held that all of these disbursements from principal were illegal, and the Government was liable for the total diversions, amounting to $154,455.30 (Opinion, Item 9).

B. Miscellaneous Claims

1. By Article VIII of the Treaty of August 7, 1856, 11 Stat. 699, 702 (Finding III), the Government promised the Seminoles

> to provide annually for ten years the sum of three thousand dollars for the support of

> schools; two thousand dollars for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith shops among them, * * *

During the ten years covered by this article, the fiscal years from 1858 to 1867, inclusive, the Government disbursed in payment of these obligations $10,436.58 (Finding IV). The Government contended that it had disbursed the balance of $61,563.42 for the relief and support of loyal refugee Indians, and that this expenditure, having been authorized by the Resolution of Feb. 22, 1862, No. 13, 12 Stat. 614; Act of July 5, 1862, c. 135, 12 Stat. 512, 528; Section 3 of the Act of March 3, 1863, c. 99, 12 Stat. 774, 793; Section 2 of the Act of June 25, 1864, c. 148, 13 Stat. 161, 180; and Section 5 of the Act of March 3, 1865, c. 127, 13 Stat. 541, 562, fulfilled the obligation under Article VIII of the Treaty of 1856. The lower court made no finding as to whether the $61,563.42 had actually been expended for the benefit of refugee Indians, but merely held that there was no law authorizing the Government to satisfy its treaty obligation in this manner. The Government also contended that the expenditure of the $61,563.42 for the benefit of refugee Indians was ratified by Article VIII of the Treaty of March 21, 1866, 14 Stat. 755, 759. But the lower court denied the contention, and held the Government liable for the whole balance, $61,563.42 (Opinion, Item 1).

2. By Article IX of the Treaty of Aug. 7, 1856, 11 Stat. 699, 703 (Finding III), the Government promised the Seminoles

> to expend for them in improvements, after they shall all remove, the sum of twenty thousand dollars * * *.

The Government, however, disbursed for this purpose only $18,210 (Finding VII). The lower court held the Government liable for the balance of $1,790 (Opinion, Item 4).

3. By Article VI of the Treaty of March 21, 1866, 14 Stat. 755, 758 (Finding VIII) the Government promised the Seminoles

> that the United States shall cause to be constructed, at an expense not exceeding ten thousand ($10,000) dollars, suitable agency buildings, the site whereof shall be selected by the agent of said tribe, under the direction of the superintendent of Indian affairs; in consideration whereof, the Seminole nation hereby relinquish and cede forever to the United States one section of their lands, upon which said agency buildings shall be directed [erected], which land shall revert to said nation when no longer used by the United States, upon said nation paying a fair value for said buildings at the time vacated.

The Government disbursed for this purpose the sum of $931.76 (Finding XI). The lower court held the Government liable for the difference be-

tween that sum and $10,000, or $9,068.24 (Opinion, Item 7).

In addition to the foregoing claims, other claims, for which certiorari is not petitioned, were adjudicated by the lower court, and considered in its opinion under Items 2, 6, 10, 11, 12, and 13.

SPECIFICATIONS OF ERROR TO BE URGED

The court below erred:

1. In failing to hold that its jurisdiction was limited to claims of the Seminole Nation arising from payments made, after July 1, 1898, by the Government, from trust funds created under Seminole treaties or agreements, to persons other than the Seminole tribal treasurer.

2. In holding that Section 19 of the Curtis Act applied to the four trusts created by Article VIII of the Seminole Treaty of 1856, Article III of the Seminole Treaty of 1866, Section 12 of the Indian Appropriation Act for the fiscal year 1890, and the Seminole Agreement of 1897, for the benefit of the Seminoles.

3. In holding that the Government is liable to make to the Seminoles a second payment of the $864,702.58 which the Government had already paid from 1889 to 1907 at their request to the tribal treasurer on account of obligations arising under the said four trusts held for the benefit of the Seminoles.

4. In holding that it was unlawful for the Government, from 1875 to 1898 inclusive, to have paid

directly to the Seminole tribal treasurer the interest due on the $50,000 trust fund for the support of schools created by Article III of the Seminole Treaty of 1866; and that the Government is now liable to make to the Seminoles a second payment per capita of any interest so paid.

5. In holding that the Government was not entitled to set off against its underpayments of amounts due under the trust established by Article VIII of the Seminole Treaty of 1856 the amounts by which, in the years 1875, 1877, 1880, 1882, and 1883, the Government had overpaid the $25,000 annuity promised, the amounts paid in 1870 and 1874 at the request of the Council of the Seminole Nation, and the amounts expended in 1908, 1909, 1910, 1919, and 1921 for "Fulfilling Treaties with Florida Indians or Seminole Indians."

6. In failing to make findings of fact as to the amounts by which, in the years 1875, 1877, 1880, 1882, and 1883, the Government had overpaid the said $25,000 promised annuity, the amounts paid in 1870 and 1874 at the request of the Council of the Seminole Nation, and the amounts expended in 1908, 1909, 1910, 1919, and 1921 for "Fulfilling Treaties with Florida Indians or Seminole Indians."

7. In holding that the Government was not entitled to set off against its underpayments of amounts due under the $70,000 trust established by Article III of the Treaty of 1866 the miscellaneous

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amounts expended in 1908, 1909, 1910, 1919, and 1921 for "Fulfilling Treaties with Florida Indians or Seminole Indians:"

8. In failing to make findings of fact as to the total amount the Government expended in 1908, 1909, 1910, 1919, and 1921 for "Fulfilling Treaties with Florida Indians or Seminole Indians," and the portions thereof attributable respectively to the obligations due under the $70,000 trust established under the Treaty of 1866, and the obligations due under the $500,000 trust fund established by the Treaty of 1856.

9. In holding that Congress had not authorized such payments as were made from the principal of the $500,000 trust fund set apart by the Agreement of 1897.

10. In failing to hold that the Government was not liable for a deficiency in the annual payments of $7,200 due under Article VIII of the Treaty of 1856 inasmuch as Congress had authorized the expenditure of those annual payments, and the executive branch of the Government had spent them, for the relief of loyal refugee Indians instead of the purposes originally contemplated.

11. In failing to hold that the Government was not liable for a deficiency in so many of the said annual payments of $7,200 as were due prior to the fiscal year 1867 inasmuch as the Seminoles, by Article VIII of the Treaty of 1866, released any liabilities that might have existed for those years.

12. In failing specifically to find and to hold that to meet the said annual payment of $7,200 for the fiscal year 1867 the Government expended, in the manner provided for in the Treaty of 1866, $3,000 for the support of schools, $2,000 for agricultural assistance, and $2,197.50 for the support of smiths.

13. In holding that the promise in Article VI of the Treaty of 1866 that "the United States shall cause to be constructed, at an expense *not exceeding* ten thousand ($10,000) dollars, suitable agency buildings", should be construed to require the Government to spend the entire $10,000.

14. In holding that by breaking its agreement to erect agency buildings, the Government became liable for the difference between the full value of the buildings promised and the cost of the buildings actually erected.

REASONS FOR GRANTING THE WRIT

1. Departing from the usual and accepted course of judicial proceedings, the lower court erroneously allowed the Seminoles, after the time for bringing suit had lapsed, to amend their petition to present for adjudication causes of action not included in their original petition.

The statutes by which the United States consented to be sued by the Seminoles on the claims at bar provided that suit must be instituted by June 30, 1930. Act of May 20, 1924, c. 162, 43 Stat. 133, as amended by Act of Feb. 19, 1929, c. 268, 45 Stat.

1229. By that date the only pleading presented to the lower court by the Seminoles was the petition of February 24, 1930. The essential elements of the cause of action then set forth were: (1) that as a result of treaties and agreements (not statutes) the Government held funds in trust for the Seminoles (paragraph II); (2) that, after the Curtis Act of June 28, 1898, the Government had refused payment from these funds (paragraph III); (3) that from July 1, 1898, until February 24, 1930, the Government "in violation of the rights of plaintiff under its various treaties and agreements with defendant, and without authority of Congress, has spent large sums of the trust funds of plaintiff" (paragraph VI); and (4) that the Seminoles seek a judgment for these unlawful expenditures "during said period" from 1898 to 1930 (paragraph VIII).

In short, the petition sought recovery for expenditures, made after July 1, 1898, without the authority of a treaty or agreement, from trust funds established by a treaty or agreement.

There is no resemblance between this original cause of action and the following causes of action or claims set forth in the amended petition filed September 19, 1934, four years after the jurisdiction of the Court of Claims had lapsed, but none the less adjudicated by that court:

(1) The claim that the Government did not completely perform its promise under Article VIII

of the Treaty of August 7, 1856, to pay annually for ten years, $3,000 for schools, $2,000 for agricultural assistance, and $2,200 for blacksmiths. (Opinion, Item 1. See pages 9–10, *supra*.) This is not an obligation connected with a trust fund, and the dereliction, if any, occurred before 1898.

(2) The claim that the Government did not completely perform its promise under Article IX of the Treaty of August 7, 1856, to spend $20,000 for improvements. Opinion, Item 4. See page 11, *supra*. This cause of action is not connected with a trust fund, and antedates 1898.

(3) The claim that the Government did not completely perform its promise under Article VI of the Treaty of March 21, 1866, to spend $10,000 for agency buildings. Opinion, Item 7. See page 11, *supra*. This is another cause of action not connected with a trust, and antedates 1898.

(4) The claim that in 1867–1874, 1876, 1879, and 1907–1909, the Government made underpayments of interest on the $500,000 trust established by the Treaty of 1856. Opinion, Item 3. See pages 6–7, *supra*. A claim of underpayment is not the same as a claim for wrongful expenditure; and, moreover, most of these underpayments are alleged to have occurred prior to 1898.

(5) The claim that from 1867 to 1874, inclusive, and again in 1907, the Government made underpayments of interest on the $70,000 trust established by the Treaty of 1866. Opinion, Item 3. See

pages 7–8, *supra*. This claim of underpayment, likewise, is not similar to a claim for wrongful expenditure; and again most of the underpayments are alleged to have occurred prior to 1898.

(6) The claim that from 1875 to 1898 the Government paid the interest on the $70,000 trust fund established by the Treaty of 1866 to the Seminole tribal treasurer instead of for the support of the Seminole schools. Opinion, Item 5. See page 8, *supra*. This claim is based on diversions prior to July 1, 1898.

(7) The claim that from 1899 through the first half of the fiscal year 1907, the Government, in violation of Section 19 of the Curtis Act, paid to the Seminole tribal treasurer the annual interest on the four trust funds established by the Treaty of 1856, the Treaty of 1866, the Indian Appropriation Act of 1890, and the Seminole Agreement of 1897. Opinion, Item 8. See pages 5–6, *supra*. The part of this claim which relates to the $1,500,000 trust fund created by the Indian Appropriation Act of 1890 clearly is different from the cause of action set forth in the original petition of the Seminoles, for the $1,500,000 trust fund exists solely by virtue of statute, not as a result of "treaties and agreements" (Petition, paragraph II). But there is a more basic reason why this and every other part of this claim (and the preceding claim as well) cannot be regarded as having been included in the original cause of action embodied in the petition of February 24, 1930. The original petition

clearly stated, both in the second and third paragraphs, that under all the trusts the duty of the Government was to pay the interest to the National Treasurer of the plaintiff. Complaint was *then* made that the Government committed a breach of trust because it did *not* pay the sums to the tribal treasurer but disbursed them for other purposes. Surely the plaintiff states a different case in *now* alleging that the Government's breach is that it *did* pay the sums to the tribal treasurer when it should have disbursed them for other purposes. Further evidence of this *volte face,* and of the introduction of a new cause of action, is to be found in other language of the pleadings: whereas once exclusive reliance was placed on "the rights of plaintiff under its various treaties and agreements". (Petition, paragraph VI) which had not been impaired by any "subsequent act" of Congress (Petition, paragraph V); now exclusive reliance is sought to be placed on "the violation of said Section 19 of said Act of June 28th, 1898" (Amended Petition, paragraph VIII).

The foregoing analysis makes it clear that many of the claims decided by the lower court were in no sense presented to it in the original petition. In allowing them to be incorporated by an amendment made after June 30, 1930, the lower court did not merely violate the ordinary canon that an amendment will not be permitted to introduce a new cause of action after the statute of limitations has run

N. & G. Taylor Co., Inc. v. *Anderson,* 275 U. S. 431, 438–439; *Baltimore & Ohio S. W. R. Co.* v. *Carroll,* 280 U. S. 491, 494; *United States* v. *Henry Prentiss & Co.,* 288 U. S. 73, 84; see *United States* v. *Memphis Cotton Oil Co.,* 288 U. S. 62, 68–69), it also entertained a suit against the United States on terms to which the Government never consented (*Finn* v. *United States,* 123 U. S. 227). This error went to the jurisdiction of the Court of Claims and can be raised at any stage of the proceedings. *Matson Navigation Co.* v. *United States,* 284 U. S. 352, 359. Cf. *United States* v. *Martinez,* 195 U. S. 469.

2. In holding that Section 19 of the Curtis Act changed the purposes for which, and the persons to whom, moneys due under trusts established under treaties and statutes relating to the Seminoles should be paid (Opinion, Item 8), the lower court has erroneously decided an important question of Federal law which has not been hitherto presented to any court, but which should be settled by this Court.

The Government contends, and the administrative construction prevailing since 1898 has been, that Section 19 of the Curtis Act, Act of June 28, 1898, c. 517, 30 Stat. 495, 502, does not apply to interest payments under any of the four trusts. The section reads as follows:

> That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof *for*

> *disbursement,* but payments of all sums to *members of said tribes* shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation. [Italics added.]

This section relates exclusively to the Government's method of paying amounts due to individual Indians. Prior to the Curtis Act the Government had adopted the practice of paying to the tribal treasurer sums due to the various members of the tribe with directions to disburse the same (Opinion, Item 8). The Curtis Act altered this particular practice and required that payments "for disbursement" "to members of said tribes" should be made not "to any of the tribal governments or to any officer thereof", but to "an officer appointed by" the Secretary of the Interior. The legislative history as well as the language of the section proves that Congress intended to embrace merely payments for disbursement, not miscellaneous direct grants or payments to the Seminole Nation for "expenses in transacting their business" as was originally suggested by the author of the bill (Cong. Rec., 55th Cong., 2d Sess., p. 3869, set forth in the Appendix, p. 76).

Since it is limited to payments for disbursement, the section obviously does not govern payments

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under the second trust or the fourth trust. The second trust, amounting to $70,000, established by Article III of the Treaty of March 21, 1866, provided that $2,500 interest should be "paid annually and appropriated to the support of schools", without specifying to whom payment should be made (Finding VIII). The fourth trust, amounting to $500,000, set apart by the Seminole Agreement of 1897 from the earlier trust funds belonging to the Seminoles, provided that $25,000 interest should be "applied by the Secretary of the Interior to the support of Mekasuky and Emahaka Academies and the district schools" (Opinion, Item 9. And see particularly the sixth and second full paragraphs at 30 Stat. 568). In each of these trusts the fiduciary duty of the Government was not to pay money to members of the tribe per capita or otherwise, but to apply interest for a specific educational purpose. In turning the interest over to the tribal treasurer, the Government intended it not "for disbursement", nor "to members of said tribes", but for education.

Moreover, the fourth trust is for another reason not subject to Section 19 of the Curtis Act. The Curtis Act was enacted on June 28, 1898. The fourth trust was created three days thereafter, and specific provision was made "reserving said sum of $500,000" from payment "per capita to the members of said tribe." (See sixth full paragraph, 30 Stat. 568.) This later enactment is the govern-

ing statute, not only under general principles of statutory construction, but because the later enactment specifies that "all laws and parts of laws inconsistent therewith are hereby repealed" (30 Stat. 569).

Nor does Section 19 of the Curtis Act apply to either of the other trusts. The third trust, established by Section 12 of the Indian Appropriation Act of 1890 as a fund of $1,500,000, but reduced to $1,000,000 by the Seminole Agreement of 1897 (30 Stat. 567), provided that the interest should "be paid semi-annually to the treasurer of said [Seminole] nation" (25 Stat. 980, 1004). In direct contrast to the fund of $412,942.20, created in the same sentence of the Indian Appropriation Act of 1890, which was "to be paid to such person or persons as shall be duly authorized by the laws of said [Seminole] nation to receive the same", the trust of $1,500,000 is to be paid not to the individual members of the Seminole tribes but "to the treasurer of said nation." Payments to the tribal treasurer are made to him not as Federal agent for disbursement to members of the tribe, but as a tribal officer for expenditure according to the directions of the Council of the Seminole Nation, which itself is the cestui que trust. And exactly the same principle seems to govern the payments under the first trust. This first trust, amounting to $500,000, established by Article VIII of the Treaty of 1856, originally provided that the interest should be

"paid over to them [the Seminoles] *per capita* as an annuity" (Finding III), but by the Act of April 15, 1874, c. 97, 18 Stat. 29, and subsequent administrative and tribal action, it was determined "to pay such annuities or any part thereof into the treasury of the Seminole nation to be used as the council of the same shall provide, instead of paying the same per capita according to the terms of said treaty." (See Opinion, Item 5.)

Furthermore, it may be suggested that Section 19 of the Curtis Act cannot properly be applied to any trust for the benefit of the Seminoles. The Curtis Act, while naming certain Indian tribes, nowhere makes any reference to the Seminoles as such. Directly after the Curtis Act was passed, Congress made special provision for Seminole funds, and specifically stipulated how and when moneys belonging to the Seminoles should be distributed per capita (30 Stat. 568, paragraph 6). Two Comptrollers of the Treasury, those who represented the Seminoles in 1898, and successive Secretaries of the Interior, have all regarded the specific provision as controlling the Seminole funds, and have thought that Section 19 was an inconsistent law which had been repealed by the concluding clause of the Act ratifying the Seminole Agreement of 1897 (30 Stat. 567, 569). Opinion of L. P. Mitchell, Assistant Comptroller, August 23, 1898; Opinion of R. J. Tracewell, Comptroller, October 19, 1906, Appendix, pp. 49–72, *infra*. (But see the subsequently withdrawn opinion of Asst. Atty.

Gen. Van Devanter, Appendix, pp. 72–76, *infra,* holding that Section 19 of the Curtis Act applies to payments under Seminole treaties. This opinion does not decide whether the rule also applies to payments to the Seminoles which are not intended "for disbursement.") Where the statutes are so ambiguous, and the possible overlapping so evident, we submit that great weight should be given to an administrative construction, now nearly forty years old, which was originally given by the Comptroller of the Treasury, an official specifically charged with the duty of deciding the question (Section 8 of the Dockery Act, Act of July 31, 1894, c. 174, 28 Stat. 162, 208) whose opinion was first invoked by the Secretary of the Interior at the request of the very people who now complain of it (see Appendix, p. 59, second full paragraph), and has since been consistently followed in action annually reported to Congress. (See Reports of the Secretary of the Interior, 1899 through 1907.)

3. In conflict with the weight of authority, the lower court held that where a trustee, at the request of the beneficiaries, makes to their agent payments of which they do not deny receiving the benefit, the trustee is liable to pay these sums to the beneficiaries *a second time.*

In two different situations the lower court applied this erroneous holding:

(a) After determining that the Curtis Act applied to the Seminole trusts, the lower court, as requested by paragraph VIII of the Seminoles'

Amended Petition, held (Finding XII; Opinion, Item 8) that the Government was liable to make to the Seminoles a second payment of the $864,702.58 which the Government had admittedly already paid at their request (See Opinion of Assistant Comptroller Mitchell, particularly second full paragraph, page 59, *infra*) to the tribal treasurer, an appropriate officer of the tribal government recognized by the United States Government. (See 30 Stat. 567.) (It is clear from the Amended Petition, from the court's opinion, and from the amount of the judgment, $864,702.58, not $879,500, that this decision is based on an alleged unauthorized diversion of trust funds, not on an alleged failure to pay interest promised on the trusts.)

(b) The lower court also held that the Government was liable to make to the Seminoles a second payment of the $57,500 which, from 1875 through 1898, the Government had admittedly paid to the Seminole tribal treasurer "for the support of schools" from the interest on $50,000 of the $70,000 trust established by the Treaty of 1866. See page 8, *supra*.

The result reached by the lower court ignores the axiomatic principle that the beneficiaries of a trust cannot hold the trustee liable for actions with respect to the trust property which they request him to take or to which they consent. *Duncan* v. *Jaudon,* 15 Wall. 165, 171–172; *Pope* v. *Farnsworth,* 146 Mass. 339, 344 (per Holmes, J.); *Lannin*

v. *Buckley,* 256 Mass. 78, 82; *Matter of Niles,* 113 N. Y. 547, 559; Perry on *Trusts and Trustees* (7th ed.), § 849; American Law Institute, *Restatement of the Law of Trusts,* § 216. This general rule is particularly applicable in the instant case, for even if the payment to the tribal treasurer was technically improper, the Seminoles do not suggest that the money did not reach them, or that they were damaged, or that the judgment of the lower court will not enrich them by a double payment.

4. In holding that Congress had not authorized the Government to make expenditures from the principal of the $500,000 trust fund which was set apart by the Seminole Agreement of 1897 (Opinion, Item 9), the lower court erroneously decided an important question of Federal law which has not been hitherto presented to any court, but which should be settled by this Court.

By the Seminole Agreement of 1897, ratified by Act of July 1, 1898, c. 542, 30 Stat. 567, 568, $500,000 was "set apart as a permanent school fund." From the principal of this fund the Government disbursed for per capita payments $25,744.50 in 1920, and $6,701.06 in 1921 (Finding XIII). The lower court held that this disbursement from principal was not authorized by Congress. The Government submits that this holding is obviously untenable, inasmuch as Congress, in the Act of May 25, 1918, c. 86, 40 Stat. 561, 580, and pursuant to its constitutional power to modify treaties with the

Indians (*Stephens* v. *Cherokee Nation,* 174 U. S. 445) had specifically provided

> That the Secretary of the Interior be, and he is hereby, authorized to pay to the enrolled members of the Seminole Tribe * * * out of the Seminole school fund * * * not to exceed $100 per capita * * *

This specific provision was not limited in its operation to one year, but was a continuing grant of authority as is plain not only from the words of this Act itself but also from the later Act of June 30, 1919, c. 4, 41 Stat. 3, 23, and the Act of Feb. 14, 1920, c. 75, 41 Stat. 408, 427–428 (the appropriation Acts for the two fiscal years when the sums of $25,744.50 and $6,701.06 were disbursed).

From the principal of this fund the Government also made disbursements for education in each of the years from 1922 to 1930 (Finding XIII). The lower court also held that this disbursement had not been authorized. But the appropriation acts for this period, Act of Mar. 3, 1921, c. 119, 41 Stat. 1225, 1242; Act of May 24, 1922, c. 199, 42 Stat. 552, 575; Act of Jan. 24, 1923, c. 42, 42 Stat. 1174, 1196; Act of June 5, 1924, c. 264, 43 Stat. 390, 398; Act of Mar. 3, 1925, c. 462, 43 Stat. 1141, 1148; Act of May 10, 1926, c. 277, 44 Stat. 453, 460; Act of Jan. 12, 1927, c. 27, 44 Stat. 934, 948; Act of Mar. 7, 1928, c. 137, 45 Stat. 200, 216; Act of Mar. 4, 1929, c. 705, 45 Stat. 1562, 1577 (all of which are printed in the Appendix) make it clear that the

court was in error and that Congress had each year provided substantially as follows:

> The Secretary of the Interior is hereby authorized to continue during the ensuing fiscal year the tribal and other schools among the Choctaw, Chickasaw, Creek, and Seminole Tribes from the tribal funds of those nations.

This authorization is not limited to an expenditure of interest from the fund which was originally $500,000, but which as a result of the per capita payments had been reduced to less than $275,000. The authorization embraces any expenditure whether from principal or interest if it is necessary "to continue * * * the tribal and other schools." And, indeed, expenditures from principal must have been anticipated since the interest on the reduced fund was inadequate to educate the Seminoles. Moreover, the use of the principal for educational purposes had gone on for many years and had been regularly reported to Congress.

5. The lower court's decision is incorrect in other respects, as to which error has already been specified, pages 12–15, *supra,* but as to which it does not seem necessary to make a full argument now. At this time it will be sufficient to note two rulings on questions of general law which are obviously untenable and in conflict with the weight of authority:

(a) The lower court held that in the absence of a formal counterclaim, the Government was not entitled to set its overpayments in some years of income on the first $500,000 trust off against its underpayments in other years of income on the same trust. See pages 6–7, *supra.* This holding conflicts with the hornbook rule that in a suit against a trustee for an accounting, he is entitled to credit against or withhold from any amount owing to the beneficiary any amount already paid the beneficiary when it was not due. *Livesey* v. *Livesey,* 3 Russ. 287, 295–296; *Dibbs* v. *Goren,* 11 Beav. 483, 484; *Hammond* v. *Hammond,* 169 Mass. 82, 85; *Bailey* v. *Smith,* 214 Mass. 114, 120; *King's Estate,* 147 Pa. 410; *Equitable Trust Co.* v. *Miller,* 185 N. Y. Supp. 661, aff'd, 197 App. Div. 391, aff'd, 233 N. Y. 650; Perry, *Trusts and Trustees,* 7th ed. § 915, 930; Bogert, *Trusts and Trustees,* pp. 2364–2365. This hornbook rule is not affected by Section 3 of the Act of May 20, 1924, c. 162, 43 Stat. 133, 134. That section obviously refers to offsets arising from transactions in no way related to the transaction on which the principal claim is founded, and does not modify the rule that "in a bill for an accounting, both parties are actors, and a defendant may have a decree in his favor without the aid of a cross-bill." *Braman* v. *Foss,* 204 Mass. 404, 411.

(b) In Article VI of the Treaty of 1866 the Government agreed to spend "*not exceeding* ten

thousand ($10,000) dollars" for agency buildings which the Seminoles were not to own until the United States no longer wanted the land on which they stood, and until the Seminoles paid a fair value for the buildings (Finding IX). The Government spent $931.76 for agency buildings (Finding XI). The lower court held the Government liable for the entire balance, $9,068.24 (Opinion, Item 7). Among other reasons, this holding is erroneous because it conflicts with the established rule that where A agrees to erect on his own land a building for B's purposes, and A fails to perform, the measure of damages is the fair rental value of the promised building, and not the entire value of the promised building. *Hexter* v. *Knox,* 63 N. Y. 561; *Pewaukee Milling Co.* v. *Howitt,* 86 Wis. 270, 277; *Prescott* v. *Otterstatter,* 79 Pa. 462, 467; Tiffany, *Landlord and Tenant,* § 87 (e) (10), pp. 605–606.

CONCLUSION

Wherefore it is respectfully submitted that this petition should be granted.

STANLEY REED,
Solicitor General.

JUNE 1936.

APPENDIX

ACT OF MAY 20, 1924, C. 162, 43 STAT. 133, 134

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Seminole Indian Nation or Tribe, or arising under or growing out of any Act of Congress in relation to Indian Affairs, which said Seminole Nation or Tribe may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

SEC. 2. Any and all claims against the United States within the purview of this Act shall be forever barred unless suit be instituted or petition filed as herein provided in the Court of Claims within five years from the date of approval of this Act, and such suit shall make the Seminole Nation party plaintiff and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the Seminoles approved by the Commissioner of Indian Affairs and the Secretary of the Interior; and said contract shall be executed in their behalf by a com-

mittee chosen by them under the direction and approval of the Commissioner of Indian Affairs and the Secretary of the Interior. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Indian nation to such treaties, papers, correspondence, or records as may be needed by the attorney or attorneys of said Indian nation.

SEC. 3. In said suit the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against said Indian nation, but any payment which may have been made by the United States upon any claim against the United States shall not operate as an estoppel, but may be pleaded as an offset in such suit.

SEC. 4. That from the decision of the Court of Claims in any suit prosecuted under the authority of this Act, an appeal may be taken by either party as in other cases to the Supreme Court of the United States.

ACT OF FEB. 19, 1929, C. 268, 45 STAT. 1229

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the time within which suits may be instituted under the Act of Congress approved March 19, 1924, entitled "An Act conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in any claims which the Cherokee Indians may have against the United States, and for other purposes"; the Act of Congress approved May 20,

1924, entitled "An Act conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in any claims which the Seminole Indians may have against the United States, and for other purposes"; the Act of Congress approved May 24, 1924, entitled "An Act conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in any claims which the Creek Indians may have against the United States, and for other purposes"; and the Act of Congress approved June 7, 1924, entitled "An Act conferring jurisdiction upon the Court of Claims to hear, examine, adjucate, and enter judgment in any claims which the Choctaw and Chickasaw Indians may have against the United States, and for other purposes", shall be extended to June 30, 1930, to permit each Indian nation or tribe mentioned in said Acts of Congress to institute suits as provided in said Acts and the joint resolution approved May 19, 1926 (Public Resolution Numbered 27, Sixty-ninth Congress).

TREATY OF AUGUST 7, 1856, BETWEEN THE UNITED STATES AND THE CREEK AND SEMINOLE TRIBES OF INDIANS, 11 STAT. 699, 702

ARTICLE VIII. The Seminoles hereby release and discharge the United States from all claims and demands which their delegation have set up against them, and obligate themselves to remove to and settle in the new country herein provided for them as soon as practicable. In consideration of such release, discharge, and obligation, and as the Indians must abandon their present improvements, and incur considerable expense in reestablishing themselves, and as the government desires

to secure their assistance in inducing their brethren yet in Florida to emigrate and settle with them west of the Mississippi River, and is willing to offer liberal inducements to the latter peaceably so to do, the United States do therefore agree and stipulate as follows, viz: To pay to the Seminoles now west, the sum of sixty[1] thousand dollars, which shall be in lieu of their present improvements, and in full for the expenses of their removal and establishing themselves in their new country; to provide annually for ten years the sum of three thousand dollars for the support of schools; two thousand dollars for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith shops among them, said sums to be applied to these objects in such manner as the President shall direct. Also to invest for them the sum of two hundred and fifty thousand dollars, at five percent per annum, the interest to be regularly paid over to them *per capita* as annuity; the further sum of two hundred and fifty thousand dollars shall be invested in like manner whenever the Seminoles now remaining in Florida shall have emigrated and joined their brethren in the west, whereupon the two sums so invested, shall constitute a fund belonging to the united tribe of Seminoles, and the interest on which, at the rate aforesaid, shall be annually paid over to them *per capita* as an annuity; but no portion of the principal thus invested, or the interest thereon annually due and payable, shall ever be taken to pay claims or demands against said Indians, except such as may hereafter arise under the intercourse laws.

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[1] See Amendent, substituting ninety for sixty, *post*, p. 706.

ARTICLE IX. The United States agree * * * to expend for them in improvements, after they shall all remove, the sum of twenty thousand dollars * * *.

TREATY OF MARCH 21, 1866, BETWEEN THE UNITED STATES AND THE SEMINOLE NATION, 14 STAT. 755, 756

ARTICLE III. In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek nation under the provisions of article first (1st), treaty of the United States with the Creeks and Seminoles, made and concluded at Washington, D. C., August 7, 1856. In consideration of said grant and cession of their lands, estimated at two million one hundred and sixty-nine thousand and eighty (2,169,080) acres, the United States agree to pay said Seminole nation the sum of three hundred and twenty-five thousand three hundred and sixty-two ($325,362) dollars, said purchase being at the rate of fifteen cents per acre. The United States having obtained by grant of the Creek nation the westerly half of their lands, hereby grant to the Seminole nation the portion thereof hereafter described, which shall constitute the national domain of the Seminole Indians. Said lands so granted by the United States to the Seminole nation are bounded and described as follows, to wit: Beginning on the Canadian river where the line dividing the Creek lands according to the terms of their sale to the United States by their treaty of February 6, 1866, following said line due north to where said line crosses the north fork of

the Canadian river; thence up said north fork of the Canadian river a distance sufficient to make two hundred thousand acres by running due south to the Canadian river; thence down said Canadian river to the place of beginning. In consideration of said cession of two hundred thousand acres of land described above, the Seminole nation agrees to pay therefor the price of fifty cents per acre, amounting to the sum of one hundred thousand dollars, which amount shall be deducted from the sum paid by the United States for Seminole lands under the stipulations above written. The balance due the Seminole nation after making said deduction, amounting to one hundred thousand dollars, the United States agree to pay in the following manner, to wit: Thirty thousand dollars shall be paid to enable the Seminoles to occupy, restore, and improve their farms, and to make their nation independent and self-sustaining, and shall be distributed for that purpose under the direction of the Secretary of the Interior; twenty thousand dollars shall be paid in like manner for the purpose of purchasing agricultural implements, seeds, cows, and other stock; fifteen thousand dollars shall be paid for the erection of a mill suitable to accommodate said nation of Indians; seventy thousand dollars to remain in the United States treasury, upon which the United States shall pay an annual interest of five percent; fifty thousand of said sum of seventy thousand dollars shall be a permanent school fund, the interest of which shall be paid annually and appropriated to the support of schools; the remainder of the seventy thousand dollars, being twenty thousand dollars, shall remain a permanent fund, the interest of which shall

be paid annually for the support of the Seminole government; forty thousand three hundred and sixty-two dollars shall be appropriated and expended for subsisting said Indians, discriminating in favor of the destitute; all of which amounts, excepting the seventy thousand dollars, to remain in the treasury as a permanent fund, shall be paid upon the ratification of said treaty, and disbursed in such manner as the Secretary of the Interior may direct. The balance, fifty thousand dollars, or so much thereof as may be necessary to pay the losses ascertained and awarded as hereinafter provided, shall be paid when said awards shall have been duly made and approved by the Secretary of the Interior. And in case said fifty thousand dollars shall be insufficient to pay all said awards, it shall be distributed pro rata to those whose claims are so allowed; and until said awards shall be thus paid, the United States agree to pay to said Indians, in such manner and for such purposes as the Secretary of the Interior may direct, interest at the rate of five per cent per annum from the date of the ratification of this treaty.

ARTICLE VI. Inasmuch as there are no agency buildings upon the new Seminole reservation, it is therefore further agreed that the United States shall cause to be constructed, at an expense not exceeding ten thousand ($10,000) dollars, suitable agency buildings, the site whereof shall be selected by the agent of said tribe, under the direction of the Superintendent of Indian affairs; in consideration whereof, the Seminole Nation hereby relinquish and cede forever to the United States one section of their lands, upon which said agency buildings shall be *directed* [erected], which land

shall revert to said nation when no longer used by the United States, upon said nation paying a fair value for said buildings at the time vacated.

ARTICLE VIII. The stipulations of this treaty are to be a full settlement of all claims of said Seminole nation for damages and losses of every kind growing out of the late rebellion, and all expenditures by the United States of annuities in clothing and feeding refugee and destitute Indians since the diversion of annuities for that purpose, consequent upon the late war with the so-called confederate states. And the Seminoles hereby ratify and confirm all such diversions of annuities heretofore made from the funds of the Seminole nation by the United States. And the United States agree that no annuities shall be diverted from the objects for which they were originally devoted by treaty stipulations with the Seminoles, to the use of refugee and destitute Indians, other than the Seminoles or members of the Seminole nation, after the close of the present fiscal year, June thirtieth, eighteen hundred and sixty-six.

ACT OF APRIL 15, 1874, C. 97, 18 STAT. 29

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Indian Affairs, with the sanction of the Secretary of the Interior and the President of the United States, in distributing and paying annuities, interest, or other moneys now due or hereafter to become due to the Seminole tribe of Indians under the provisions of the eighth article of the treaty between the Creek and Seminole Indians and the United States, concluded August seventh, eighteen hun-

dred and fifty-six, shall be authorized to expend the same for such objects as will best promote the comfort, civilization, and improvement of the Seminole Indians, or in his discretion, with the sanction of the Secretary and the President aforesaid, shall be authorized to pay such annuities or any part thereof into the treasury of the Seminole nation to be used as the council of the same shall provide, instead of paying the same per capita according to the terms of said treaty: *Provided,* That said agreement shall provide that the sum of five thousand dollars shall be annually appropriated out of said annuity to the school fund of said tribe: *And provided further,* That the consent of said tribe to such expenditures and payment shall be first obtained.

ACT OF MARCH 2, 1889, C. 412, 25 STAT. 980, 1004

SEC. 12. That the sum of one million nine hundred and twelve thousand nine hundred and forty-two dollars and two cents be, and the same hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, to pay in full the Seminole Nation of Indians for all the right, title, interest, and claim which said nation of Indians may have in and to certain lands ceded by article three of the treaty between the United States and said nation of Indians, which was concluded June fourteenth, eighteen hundred and sixty-six, and proclaimed August sixteenth, eighteen hundred and sixty-six, and which land was then estimated to contain two million one hundred and sixty-nine thousand and eighty acres, but which is now, after survey, ascertained to contain two million thirty-seven thousand four hundred and fourteen and

sixty-two hundredths acres, said sum of money to be paid as follows: One million five hundred thousand dollars to remain in the Treasury of the United States to the credit of said nation of Indians and to bear interest at the rate of five per centum per annum from July first, eighteen hundred and eighty-nine, said interest to be paid semi-annually to the treasurer of said nation, and the sum of four hundred and twelve thousand nine hundred and forty-two dollars and twenty cents, to be paid to such person or persons as shall be duly authorized by the laws of said nation to receive the same, at such times and in such sums as shall be directed and required by the legislative authority of said nation, to be immediately available; this appropriation to become operative upon the execution by the duly appointed delegates of said nation, specially empowered so to do, of a release and conveyance to the United States of all the right, title, interest, and claim of said nation of Indians in and to said lands, in manner and form satisfactory to the President of the United States, and said release and conveyance, when fully executed and delivered, shall operate to extinguish all claims of every kind and character of said Seminole Nation of Indians in and to the tract of country to which said release and conveyance shall apply, but such release, conveyance, and extinguishment shall not inure to the benefit of or cause to vest in any railroad company any right, title, or interest whatever in or to any of said lands, and all laws and parts of laws so far as they conflict with the foregoing, are hereby repealed, and all grants or pretended grants of said lands or any interest of right therein

now existing in or on behalf of any railroad company, except rights of way and depot grounds, are hereby declared to be forever forfeited for breach of condition.

ACT OF JUNE 28, 1898, C. 517, 30 STAT. 495, 502

SEC. 19. That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation.

* * * * *

AN ACT TO RATIFY THE AGREEMENT OF DECEMBER 16, 1897, BETWEEN THE DAWES COMMISSION AND THE SEMINOLE NATION, ACT OF JULY 1, 1898, C. 542, 30 STAT. 567, 568, 569

* * * * *

[Second full paragraph on page 568.]

Five hundred thousand dollars ($500,000) of the funds belonging to the Seminoles, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five per cent interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government, applied by the Secretary of the Interior to the support of Mekasuky and Emahaka Academies and the district schools of the Seminole people; and there shall be selected and excepted from allotment

three hundred and twenty acres of land for each of said academies and eighty acres each for eight district schools in the Seminole country.

* * * * *

[Sixth full paragraph on page 568.]

All moneys belonging to the Seminoles remaining after equalizing the value of allotments as herein provided and reserving said sum of five hundred thousand dollars for school fund shall be paid per capita to the members of said tribe in three equal installments, the first to be made as soon as convenient after allotment and extinguishment of tribal government, and the others at one and two years, respectively. Such payments shall be made by a person appointed by the Secretary of the Interior, who shall prescribe the amount of and approve the bond to be given by such person; and strict account shall be given to the Secretary of the Interior for such disbursements.

* * * * *

[Last paragraph on page 569.]

* * * That the same be, and is hereby, ratified and confirmed, and all laws and parts of laws inconsistent therewith are hereby repealed.

INDIAN APPROPRIATION ACT FOR THE FISCAL YEAR 1919, ACT OF MAY 25, 1918, C. 86, 40 STAT. 561, 580

That the Secretary of the Interior be, and he is hereby, authorized to pay to the enrolled members of the Seminole Tribe of Indians of Oklahoma entitled under existing law to share in the funds of said tribe, or to their lawful heirs, out of the Seminole school fund, or any moneys belonging to said tribe in the United States Treasury or deposited in any bank or held by an official under the juris-

diction of the Secretary of the Interior, not to exceed $100 per capita: *Provided,* That said payment shall be made under such rules and regulations as the Secretary of the Interior may prescribe: * * *.

INDIAN APPROPRIATION ACT FOR THE FISCAL YEAR 1920, ACT OF JUNE 30, 1919, C. 4, 41 STAT. 3, 23

* * * That during the fiscal year ending June 30, 1920, no moneys shall be expended from tribal funds belonging to the Five Civilized Tribes, without specific appropriation by Congress, except as follows: Equalization of allotments, per capita and other payments authorized by law to individual members of the respective tribes, tribal and other Indian schools for the current fiscal year under existing law, salaries and contingent expenses of governors, chiefs, assistant chiefs, secretaries, interpreters, and mining trustees of the tribes for the current fiscal year at salaries at the rate heretofore paid, and one attorney each for the Choctaw, Chickasaw, and Creek Tribes employed under contract approved by the President, under existing law, for the current fiscal year: * * *

INDIAN APPROPRIATION ACT FOR THE FISCAL YEAR 1921, ACT OF FEB. 14, 1920, C. 75, 41 STAT. 408, 427–428

* * * That hereafter no money shall be expended from tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress, except as follows: Equalization of allotments, per capita and other payments authorized by law to individual members of the respective tribes, tribal and other Indian schools for the current fiscal year under existing law, salaries and

contingent expenses of governors, chiefs, assistant chiefs, secretaries, interpreters, and mining trustees of the tribes for the current fiscal year at salaries at the rate heretofore paid, and one attorney each for the Choctaw, Chickasaw, and Creek Tribes employed under contract approved by the President, under existing law, for the current fiscal year: * * *

INDIAN APPROPRIATION ACT FOR THE FISCAL YEAR 1922 ACT OF MARCH 3, 1921, C. 119, 41 STAT. 1225, 1243

* * * That the Secretary of the Interior is hereby authorized to continue during the ensuing fiscal year the tribal and other schools among the Choctaw, Chickasaw, Creek, and Seminole Tribes from the tribal funds of those nations, within his discretion and under such rules and regulations as he may prescribe: *And provided further*, That the Secretary of the Interior is hereby empowered, during the fiscal year ending June 30, 1922, to expend funds of the Choctaw, Chickasaw, Creek, and Seminole Nations available for school purposes under existing law for such repairs, improvements, or new buildings as he may deem essential for the proper conduct of the several schools of said tribes. For repair of barn building at Mekusukey Academy, Seminole Nation, Oklahoma, $1,000, payable out of the funds of the Seminole Tribe. * * *

DEPARTMENT OF THE INTERIOR APPROPRIATION ACT FOR THE FISCAL YEAR 1923, ACT OF MAY 24, 1922, C. 199, 42 STAT. 552, 575

* * * That the Secretary of the Interior is hereby authorized to continue during the ensuing fiscal year the tribal and other schools among the Choctaw, Chickasaw, Creek, and Seminole Tribes

from the tribal funds of those nations, within his discretion and under such rules and regulations as he may prescribe: * * * That the Secretary of the Interior is hereby empowered, during the fiscal year ending June 30, 1923, to expend funds of the Choctaw, Chickasaw, Creek, and Seminole Nations available for school purposes under existing law for such repairs, improvements, or new buildings as he may deem essential for the proper conduct of the several schools of said tribes.* * *

DEPARTMENT OF THE INTERIOR APPROPRIATION ACT FOR THE FISCAL YEAR 1924, ACT OF JANUARY 24, 1923, C. 42, 42 STAT. 1174, 1196–1197

* * * That the Secretary of the Interior is hereby authorized to continue during the ensuing fiscal year the tribal and other schools among the Choctaw, Chickasaw, Creek, and Seminole Tribes from the tribal funds of those nations, within his discretion and under such rules and regulations as he may prescribe: * * * That the Secretary of the Interior is hereby empowered, during the fiscal year ending June 30, 1924, to expend funds of the Choctaw, Chickasaw, Creek, and Seminole Nations available for school purposes under existing law for such repairs, improvements, or new buildings as he may deem essential for the proper conduct of the several schools of said tribes. * * *

DEPARTMENT OF THE INTERIOR APPROPRIATION ACT FOR THE FISCAL YEAR 1925, ACT OF JUNE 5, 1924, C. 264, 43 STAT. 390, 398

* * * That the Secretary of the Interior is hereby authorized to continue during the ensuing fiscal year the tribal and other schools among the Choctaw, Chickasaw, Creek, and Seminole Tribes

from the tribal funds of those nations, within his discretion and under such rules and regulations as he may prescribe: * * * That the Secretary of the Interior is hereby empowered, during the fiscal year ending June 30, 1925, to expend funds of the Choctaw, Chickasaw, Creek, and Seminole Nations available for school purposes under existing law for such repairs, improvements, or new buildings as he may deem essential for the proper conduct of the several schools of said tribes * * *

DEPARTMENT OF THE INTERIOR APPROPRIATION ACT FOR THE FISCAL YEAR 1926, ACT OF MARCH 3, 1925, C. 462, 43 STAT. 1141, 1148–1149

* * * That the Secretary of the Interior is hereby authorized to continue during the ensuing fiscal year the tribal and other schools among the Choctaw, Chickasaw, Creek, and Seminole Tribes from the tribal funds of those nations, within his discretion and under such rules and regulations as he may prescribe: * * * That the Secretary of the Interior is hereby empowered, during the fiscal year ending June 30, 1926, to expend funds of the Choctaw, Chickasaw, Creek, and Seminole Nations available for school purposes under existing law for such repairs, improvements, or new buildings as he may deem essential for the proper conduct of the several schools of said tribes. * * *

DEPARTMENT OF THE INTERIOR APPROPRIATION ACT FOR THE FISCAL YEAR 1927, ACT OF MAY 10, 1926, C. 277, 44 STAT. 453, 460

* * * That the Secretary of the Interior is hereby authorized to continue during the ensuing fiscal year the tribal and other schools among the

Choctaw, Chickasaw, Creek, and Seminole Tribes from the tribal funds of those nations, within his discretion and under such rules and regulations as he may prescribe: * * * That the Secretary of the Interior is hereby empowered during the fiscal year ending June 30, 1927, to expend funds of the Choctaw, Chickasaw, Creek, and Seminole Nations available for school purposes under existing law for such repairs, improvements, or new buildings as he may deem essential for the proper conduct of the several schools of said tribes. * * *

DEPARTMENT OF THE INTERIOR APPROPRIATION ACT FOR THE FISCAL YEAR 1928, ACT OF JAN. 12, 1927, C. 27, 44 STATS. 934, 948

The Secretary of the Interior is hereby authorized to continue during the ensuing fiscal year the tribal and other schools among the Choctaw, Chickasaw, Creek, and Seminole Tribes from the tribal funds of those nations, within his discretion and under such rules and regulations as he may prescribe and to expend such funds available for school purposes under existing law for such repairs, improvements, or new buildings as he may deem essential for the proper conduct of the several schools of said tribes.

DEPARTMENT OF THE INTERIOR APPROPRIATION ACT FOR THE FISCAL YEAR 1929, ACT OF MARCH 7, 1928, C. 137, 45 STAT. 200, 216

The Secretary of the Interior is hereby authorized to continue during the ensuing fiscal year the tribal and other schools among the Choctaw, Chick-

asaw, Creek, and Seminole Tribes from the tribal funds of those nations, within his discretion and under such rules and regulations as he may prescribe and to expend such funds available for school purposes under existing law for such repairs, improvements, or new buildings as he may deem essential for the proper conduct of the several schools of said tribes: *Provided,* That there may be expended from the tribal funds of the Seminole Nation the sum of $33,000, and from the tribal funds of the Choctaw Nation the sum of $135,000, for educational purposes: * * *

DEPARTMENT OF THE INTERIOR APPROPRIATION ACT FOR THE FISCAL YEAR 1930, ACT OF MARCH 4, 1929, C. 705, 45 STAT. 1562, 1577

For the support of schools and for tuition among the Five Civilized Tribes, there may be expended from tribal funds of such nations $250,000 as follows: Seminole Nation, $33,000; * * *

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, D. C., August 23, 1898.

The honorable the SECRETARY OF THE INTERIOR.
Aug. 16, 1898.

SIR: I have received your letter, without date, as follows:

> The Indian appropriation act approved July 1, 1898 (Public, No. 175), makes the following appropriations for the Seminole tribe or nation of Indians:
>
> "For five per centum interest on two hundred and fifty thousand dollars, to be paid as annuity, per *eighth* article of treaty

of August seventh, eighteen hundred and *fifty-six,* twelve thousand five hundred dollars;

"For five per centum interest on two hundred and fifty thousand dollars, to be paid as annuity (they having joined their brethren West) per *eighth* article of treaty of August seventh, eighteen hundred and *fifty-six,* twelve thousand five hundred dollars;

"For interest on fifty thousand dollars, at the rate of five per centum per annum, to be paid annually for the support of schools, as per *third* article of treaty of March twenty-first, eighteen hundred and *sixty-six,* two thousand five hundred dollars;

"For interest on twenty thousand dollars, at the rate of five per centum per annum, to be paid annually for the support of the Seminole government, as per *same article, same treaty,* one thousand dollars; in all, twenty-eight thousand five hundred dollars."

The treaty of August 7, 1856, with the Creeks and Seminoles (11 Stat., 699), secured to the said tribes respectively the right of self-government and contained the following stipulations in that connection:

"ARTICLE IV. The United States do hereby solemnly agree and bind themselves, that no State or Territory shall ever pass laws for the government of the Creek or Seminole Tribe of Indians, and that no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within, or annexed to, any Territory or State, nor shall either, or any part of either ever be erected into a Territory without the full and

free consent of the legislative authority of the tribe owning the same.

* * * * *

"ARTICLE XV. So far as may be compatible with the constitution of the United States, and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Creeks and Seminoles shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property, within their respective limits; excepting, however, all white persons, with their property, who are not, by adoption or otherwise, members of either the Creek or Seminole tribe; * * *"

The first two items of appropriation hereinbefore mentioned are in fulfillment of that part of Article VIII, of this treaty, wherein the United States agrees and stipulates with the Seminoles—

"* * * Also to invest for them the sum of two hundred and fifty thousand dollars, at five per cent per annum, the interest to be regularly paid over to them *per capita* as annuity; the further sum of two hundred and fifty thousand dollars shall be invested in like manner whenever the Seminoles now remaining in Florida shall have emigrated and joined their brethren in the west, whereupon the two sums so invested shall constitute a fund belonging to the United tribe of Seminoles, and the interest on which, at the rate aforesaid, shall be annually paid over to them *per capita* as an annuity; * * *"

The Seminole treaty of March 21, 1866 (14 Stat. 757), contains the following provision respecting the continuation of the tribal government:

"ARTICLE VII. The Seminole nation agrees to such legislation as Congress and the President may deem necessary for the better administration of the rights of person and property within the Indian Territory: *Provided, however,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs."

The last two items of appropriation hereinbefore mentioned are in fulfillment of that part of the third article of the treaty of March 21, 1866, wherein the United States agreed to pay to the Seminoles the further sum of—

"* * * seventy thousand dollars, to remain in the United States treasury, upon which the United States shall pay an annual interest of five percent; fifty thousand of said sum of seventy thousand dollars shall be a permanent school fund, the interest of which shall be paid annually and appropriated to the support of schools; the remainder of the seventy thousand dollars, being twenty thousand dollars, shall remain a permanent fund, the interest of which shall be paid annually for the support of the Seminole government; * * *."

As affecting the first two items of appropriation hereinbefore mentioned the act of Congress of April 15, 1874 (18 Stat. 29), provides:

"That the Commissioner of Indian Affairs, with the sanction of the Secretary of the Interior and the President of the United States, in distributing and paying annuities, interest, or other moneys now due or hereafter to become due to the Seminole tribe of Indians under the provisions of the eighth article of the treaty between the Creek and

Seminole Indians and the United States, concluded August seventh, eighteen hundred and fifty-six, shall be authorized to expend the same for such objects as will best promote the comfort, civilization, and improvement of the Seminole Indians, or in his discretion, with the sanction of the Secretary and the President aforesaid, shall be authorized to pay such annuities or any part thereof into the treasury of the Seminole nation to be used as the council of the same shall provide, instead of paying the same per capita according to the terms of said treaty: *Provided,* That said agreement shall provide that the sum of five thousand dollars shall be annually appropriated out of said annuity to the school fund of said tribe: *And provided further,* That the consent of said tribe to such expenditures and payment shall be first obtained."

By the act of the Seminole legislature (also called council) of April 2, 1879, the tribe consented that all annuities then due or thereafter to become due to it under the provision of the 8th article of the said treaty of August 7, 1856, should be paid into the Treasury of the Seminole nation to be used as the council of the same should provide, instead of being paid per capita according to the terms of said treaty, and by said Seminole act it was further provided that the sum of $5,000 should be annually appropriated out of said annuity to the school fund of said tribe. In pursuance of said act of Congress of April 15, 1874, and of the consent of the tribe so given by the act of its legislature, the Commissioner of Indian Affairs, with the sanction of the Secretary of the Interior and the President of the United States, has since April 2, 1879,

regularly paid into the treasury of the Seminole nation, to be used as the council of the same should provide, the annuities due to said tribe under the provisions of the 8th article of the said treaty of August 7, 1856, and the sum of $5,000 has annually been appropriated by the said tribe out of said annuity to the school fund of said tribe.

Following the said act of Congress of April 15, 1874, and the Seminole act of April 2, 1879, the Commissioner of Indian Affairs in his discretion, with the sanction of the Secretary of the Interior and the President of the United States, now desires to pay into the treasury of the Seminole nation as heretofore the annuities named in the first two items of appropriation hereinbefore mentioned, to be used as the council of the same shall provide, if section 19 of the act of Congress of June 28, 1898 (Public, No. 162), entitled "An Act for the protection of the people of the Indian Territory and for other purposes", does not prohibit the further payment of said annuities into the tribal treasury.

Heretofore the money annually appropriated by Congress for the support of the Seminole schools and for the support of the Seminole government, respectively, in fulfillment of the 3d article of the treaty of March 21, 1866, has been paid under the direction of the Secretary of the Interior to the treasurer of said tribe, to be applied to said purposes and expended according to the laws of the tribe, and it is now desired by the Commissioner of Indian Affairs and the Secretary of the Interior that the moneys embraced in the last two items of appropriation hereinbefore mentioned shall now be paid as heretofore to the treasurer of said tribe to be applied to said purposes and ex-

pended according to the laws of the tribe, if section 19 of the act of Congress of June 28, 1898, *supra,* does not prohibit the further payment of said moneys to the tribal treasurer.

By act of Congress of March 2, 1889 (25 Stat., 980, 1004), certain moneys were appropriated to pay the Seminoles for the release and conveyance of certain lands, which moneys were to be paid as follows:

"* * * One million five hundred thousand dollars to remain in the Treasury of the United States to the credit of said nation of Indians and to bear interest at the rate of five per centum per annum from July first, eighteen hundred and eighty-nine, said interest to be paid semiannually to the treasurer of said nation, and the sum of four hundred and twelve thousand nine hundred and forty-two dollars and twenty cents, to be paid to such person or persons as shall be duly authorized by the laws of said nation to receive the same, at such times and in such sums as shall be directed and required by the legislative authority of said nation, to be immediately available * * *."

Upon the execution and delivery of the required release and conveyance, the said sum of $412,942.20 was paid to the treasurer of the tribe, he being authorized by a law of the nation to receive the same, and since then the semiannual interest on the said $1,500,000, has been regularly paid "to the treasurer of said nation" to be used, applied, and expended according to the laws of the tribe. An instalment of this interest fell due July 1, 1898, but this Department is not yet advised whether it has been paid to the tribal treasurer or is being withheld pend-

ing the consideration of the provisions of section 19 of the act of June 28, 1898, *supra.*

The four items of appropriation for the Seminoles made by the Indian appropriation act of July 1, 1898, *supra;* and the annual interest on the $1,500,000, under the act of March 2, 1889, *supra,* make the total annual income or revenue of the Seminoles from funds held by the United States $103,500.00. Under the laws of that nation or tribe this income or revenue is appropriated, used, applied, and expended in the payment of the expenses of maintaining and conducting the tribal government, including an executive office, a legislature (or council), courts, constabulary, public schools, charitable and penal institutions, public roads, and bridges, etc., the annual appropriation for public schools being $24,000.

The act of Congress of June 28, 1898 (Public No. 162), entitled "An Act for the protection of the people of the Indian Territory and for other purposes", chiefly relates to the affairs and government of the Five Civilized Tribes of Indians in said Territory, the Seminole tribe being one of them. Section 19 of this act provides:

"That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States and the same shall not be liable to the payment of any previously contracted obligation."

This section as it passed the House of Representatives did not contain the words "by the United States" following the words "hereafter be made" in the first part of the section, but did contain the words "all expenses incurred in transacting their business and of" following the words "but payments of" near the middle of the section. In the course of the consideration of the measure in the Senate the section was amended by inserting the words "by the United States" as above indicated and by striking out the words "all expenses incurred in transacting their business and of", as above indicated. A copy of the bill, H. R. 8581, as it passed the House of Representatives, with the Senate amendments shown therein, accompanied the letter of the Acting Secretary of the Interior of the 23d ultimo, requesting a ruling by you respecting the payment of certain appropriations made for the Creek Indians.

By act of Congress of July 1, 1898 (Public, No. 172), entitled "An Act to ratify the agreement between the Dawes commission and the Seminole nation of Indians", an agreement negotiated between the Seminoles and the Dawes commission, bearing date December 16, 1897, was ratified by Congress and all laws and parts of laws inconsistent therewith were thereby repealed. This agreement seems to recognize the existing tribal government of the Seminoles and to contemplate a continuance thereof for the time being, although it also seems to contemplate and to be intended to lead up to, an ultimate extinguishment of the tribal government. The effect of this agreement upon existing treaty stipulations is therein stated in these words:

"This agreement shall in nowise affect the provisions of existing treaties between the Seminole nation and the United States except insofar as it is inconsistent therewith."

The only provisions in this agreement regulating the payment of money to the Seminole tribe, are contained in the three following stipulations therein:

"Should there be discovered on any allotment any coal, mineral, coal oil, or natural gas, and the same should be operated so as to produce royalty, one-half of such royalty shall be paid to such allottee and the remaining half into the tribal treasury *until extinguishment of tribal government,* and the latter shall be used for the purpose of equalizing the value of allotments; and if the same be insufficient therefor, any other funds belonging to the tribe, *upon extinguishment of tribal government,* may be used for such purpose, so that each allotment may be made equal in value as aforesaid.

* * * * *

"Five hundred thousand dollars ($500,000) of the funds belonging to the Seminoles, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five per cent interest, or invested so as to produce such amount of interest, which shall be, *after extinguishment of tribal government,* applied by the Secretary of the Interior to the support of Mekasuky and Emahaka Academies and the district schools of the Seminole people; * * *

* * * * *

"All moneys belonging to the Seminoles *remaining after equalizing the value of al-*

lotments as herein provided and reserving said sum of five hundred thousand dollars for school funds shall be paid per capita to the members of said tribe in three equal instalments, the first to be made as soon as convenient *after* allotment and *extinguishment of tribal government,* and the others at one and two years, respectively. Such payments shall be made by a person appointed by the Secretary of the Interior, who shall prescribe the amount of and approve the bond to be given by such person; and strict account shall be given to the Secretary of the Interior for such disbursements."

A question has arisen whether the money due to the Seminole tribe under the Indian appropriation act of July 1, 1898, aforesaid, and the interest on the $1,500,000 under the act of March 2, 1889, aforesaid, can all, or any of it, be now paid into the tribal treasury, as heretofore, or whether such money must be paid out and disbursed "under direction of the Secretary of the Interior by an officer appointed by him" pursuant to section 19 of the act of June 28, 1898, aforesaid.

The Seminole tribe insist that all of said money can be, and should be, paid as heretofore, into the tribal treasury, to be applied and expended according to the laws of the tribe. In this connection the tribe contends:

First, That section 19 only prohibits the payment of money "to any of the tribal governments or to any officer thereof *for disbursement*", and that the word "disbursement", as here employed, means distribution in the sense of a division among the members and does not include the payment of expenses incurred in the course of maintaining and conducting the tribal gov-

ernment. It is claimed that this is shown (a) by the striking out of the words "all expenses incurred in transacting their business and of" from the section as it passed the House of Representatives; (b) by the fact that otherwise construed the two parts of the section are not coextensive or harmonious, the first part of the section withholding all moneys of every kind from the tribal government and its officers, while the succeeding part of the section only regulates payments to members or per capita payments; in other words, that no provision is made for the payment of the expenses of maintaining and conducting the tribal government to which the moneys are appropriated and applied under the tribal laws, the new and substituted provision for disbursement only applying to payments to members or per capita payments, while the expenses incurred in maintaining and conducting the tribal government are not incurred on the per capita plan and in many instances are to be paid to persons who are not members of the tribe, as in the case of payments to teachers in the public schools; (c) by the fact that contemporaneously with the adoption of section 19, and as a part of the same act (sections 29 and 30), agreements with the Choctaws and Chickasaws and with the Muscogees or Creeks were ratified, containing the following stipulations, respectively:

"That all per capita payments hereafter made to the *members* of the Choctaw or Chickasaw nations shall be paid directly to each individual member by a bonded officer of the United States, under the direction of the Secretary of the Interior, which officer shall be required to give strict account for such disbursements to said Secretary.

"All payments hereafter to be made to the members of the said nation shall be paid directly to each individual member by a bonded officer of the United States, under the direction of the Secretary of the Interior, which officer shall be required to give strict account for such disbursements to the Secretary."

and by the fact that the Seminole agreement ratified almost simultaneously (July 1, 1898) contains a similar provision (hereinbefore quoted), all being limited to a regulation of payments to members or per capita payments—the claim advanced in this connection being that the provisions of these three agreements upon this subject are *in pari materia* with section 19 and all should be construed together, and that so construed section 19 does not include payments which are not otherwise directed by law to be made to members or per capita; (d) by the fact that the following provision of the act of June 7, 1897 (30 Stat. 62, 84):

"That on and after January first, eighteen hundred and ninety-eight, all acts, ordinances, and resolutions of the council of either of the aforesaid Five Tribes passed shall be certified immediately upon their passage to the President of the United States and shall not take effect, if disapproved by him, or until thirty days after their passage; *Provided*, That this act shall not apply to resolutions for adjournment, or any acts, or resolutions, or ordinances in relation to negotiations with commissioners heretofore appointed to treat with said tribes."

was entirely repealed as to the Seminoles by the terms of the agreement with that tribe ratified July 1, 1898, and was repealed as to

tribal laws appropriating money for the regular and necessary expenses of the tribal government by the agreements with the Choctaws and Chickasaws and with the Muscogees or Creeks ratified by the act of June 28, 1898, thereby manifesting the intention of Congress to commit to these tribes the full control heretofore exercised over the expenses of maintaining and conducting the tribal governments.

SECOND. That section 19 does not require that money payable in any other form or manner be changed or converted into payments to members or per capita payments, but only directs that such payments to members or per capita payments as are elsewhere and otherwise provided for by law shall be made under the direction of the Secretary of the Interior, according to the provisions of that section. In this connection, the tribe claims that by the action of the tribe and of the Commissioner of Indian Affairs, under the act of April 15, 1874, *supra*, the interest payments provided for by the eighth article of the treaty of August 7, 1856, which include the first two items of appropriation hereinbefore mentioned, were changed and converted from per capita payments into payments for school and other tribal purposes; that the payments of interest provided for by the third article of the treaty of March 21, 1866, which include the last two items of appropriation hereinbefore mentioned, and the payments of interest provided for by the act of March 2, 1889, *supra*, have never been directed to be made to members or per capita but were directed to be made otherwise; and that therefore the pending payments to the Seminole tribe, under the Indian appropriation act of July 1,

1898, and the act of March 2, 1889, do not any of them come within the provisions of section 19.

THIRD. That if section 19, properly construed, applies to the payment of the expenses of maintaining and conducting the tribal governments it is repealed, as to the Seminole tribe, by the subsequent act of July 1, 1898, ratifying the new agreement with that tribe and repealing "all laws and parts of laws inconsistent therewith", because that agreement, as a whole and in every essential particular, shows that the intent and purpose of Congress and the Seminole tribe was to continue the existing tribal government with all of its official machinery, until the affairs of the tribe are concluded and the tribe is ready to go out of existence.

Because of the importance of the questions presented, and the necessity of having an authoritative decision thereof, I beg that under the provisions of the act of July 31, 1894 (28 Stat. 162, 208), you will decide whether the moneys appropriated for the Seminole tribe, by the Indian appropriation act of July 1, 1898, and the interest money provided for by the act of March 2, 1889, can now, as heretofore, be paid into the tribal treasury, or whether such moneys are now required to be paid or disbursed "under the direction of the Secretary of the Interior by an officer appointed by him," pursuant to the provisions of section 19 of the act of June 28, 1898.

It seems unnecessary to enter into a critical analysis of the language of section 19 of the act of June 28, 1898 (Public, No. 162), for reasons which will presently appear.

The agreement made between the Dawes Commission and the Seminole Indians, December 16, 1897, was ratified by Congress by the act of July 1, 1898 (Public No. 172). The enacting clause of this act provides:

> That the same be, and is hereby, ratified and confirmed, *and all laws and parts of laws inconsistent therewith are hereby repealed.*

If section 19 of the act of June 28, 1898, is inconsistent with the provisions of the agreement, which was ratified by the act of July 1, 1898, the former has been repealed so far as the Seminole Indians are concerned.

There is a clause in the agreement as follows:

> This agreement shall in nowise affect the provisions of existing treaties between the Seminole Indians and the United States, except insofar as it is inconsistent therewith.

From the foregoing it clearly appears that the rights and duties of the Seminole Indians are to be measured by the provisions of existing treaties construed in the light of and together with the agreement of December 16, 1897.

> This agreement shall be binding on the United States when ratified by Congress and on the Seminole people when ratified by the general council of the Seminole Nation.

The agreement has been ratified by both parties, and, therefore, it will control in the disposition of the question presented.

From the presentation of the case as it appears in your letter it seems to me clear that it was not the intention of the agreement, nor does that instrument in fact deprive the Seminole tribal gov-

ernment of its privilege and duty of disbursing its own funds *prior to the time of the extinguishment of its tribal government,* which extinguishment is evidently contemplated in the near future; therefore, I am of opinion that the moneys due these Indians can be turned over to the tribal authorities for disbursement until such time as the tribal government shall be extinguished.

Respectfully yours,

L. P. MITCHELL,
Assistant Comptroller.
J. D. T.

CCM 7

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
WASHINGTON, *October 19, 1906.*

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have received your letters of October 8 and 12, 1906 (I. T. D.) in reference to the method of disbursing moneys due the Seminole tribe of Indians. The questions upon which you ask my decision are the following:

1. Whether, under the provisions of sections 11 and 28 of the act of April 26, 1906 (34 Stat. 137), expenditures from the tribal funds and distribution of annuities arising therefrom to members of the Seminole tribe should be made by the tribal authorities of the Seminole Nation or under the direction of the Secretary of the Interior.

2. Whether the Secretary of the Interior is authorized, under section 10 of the act of April 26, 1906 (34 Stat. 137), to refuse to turn over the interest due the Seminole Nation from its school funds to its tribal authorities, and to retain the

same to be used under the direction of the Secretary in defraying the expenses of schools in the Seminole Nation,

The act referred to is entitled "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes." Sections 10, 11, 28, and 29, so far as they affect the questions are as follows:

> SEC. 10. That the Secretary of the Interior is hereby authorized and directed to assume control and direction of schools in the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, with the lands and all school property pertaining thereto, March fifth, nineteen hundred and six, and to conduct such schools under rules and regulations to be prescribed by him, retaining tribal educational officers, subject to dismissal by the Secretary of the Interior, and the present system so far as practicable, until such time as a public-school system shall have been established under Territorial or State government, and proper provision made thereunder for the education of the Indian children of said tribes, and he is hereby authorized and directed to set aside a sufficient amount of any funds, invested or otherwise, in the Treasury of the United States, belonging to said tribes, including the royalties on coal and asphalt in the Choctaw and Chickasaw nations, to defray all the necessary expenses of said schools, using, however, only such portion of said funds of each tribe as may be requisite for the schools of that tribe, not exceeding in any one year for the respective tribes the amount expended for the scholastic year ending June thirtieth, nineteen hundred and five; * * *

SEC. 11. That all revenues of whatever character accruing to the Choctaw, Chicasaw, Cherokee, Creek, and Seminole tribes, whether before or after dissolution of the tribal governments, shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him; and he shall cause to be paid all lawful claims against said tribes which may have been contracted after July first, nineteen hundred and two, or for which warrants have been regularly issued, such payments to be made from any funds in the United States Treasury belonging to said tribes. All such claims arising before dissolution of the tribal governments shall be presented to the Secretary of the Interior within six months after such dissolution, and he shall make all rules and regulations necessary to carry this provision into effect and shall pay all expenses incident to the investigation of the validity of such claims or indebtedness out of the tribal funds: * * *

SEC. 28. That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes or nations are hereby continued in full force and effect for all purposes authorized by law, until otherwise provided by law, but the tribal council or legislature in any of said tribes or nations shall not be in session for a longer period than thirty days in any one year: *Provided*, That no act, ordinance, or resolution (except resolutions of adjournment) of the tribal council or legislature of any of said tribes or nations shall be of any validity until approved by the President of the United States: *Provided further*, That no contract involving the pay-

> ment or expenditure of any money or affecting any property belonging to any of said tribes or nations made by them or any of them or by any officer thereof shall be of any validity until approved by the President of the United States.
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> SEC. 29. That all Acts and parts of Acts inconsistent with the provisions of this Act be, and the same are hereby, repealed.

In the decision of this office, dated August 23, 1898 (7 MS. Dec. 350), it was held that section 19 of the act of June 28, 1898 (30 Stat. 502), requiring that no moneys on any account whatever should be paid to tribal authorities, but be paid out under the direction of the Secretary of the Interior, did not apply to the Seminoles. The reason for that holding was that the later act of July 1, 1898 (30 Stat. 567), ratifying and confirming an agreement with the Seminoles, expressly repealed all laws and parts of laws inconsistent with the later act. It was therefore further held that the act of June 28, 1898, *supra,* did not deprive the Seminole tribal government of its privilege and duty of disbursing its own funds prior to the extinguishment of its tribal government.

The act of April 26, 1906, *supra,* by section 28, specifically continues the tribal existence and present tribal governments of the Five Civilized Tribes and naming each of them.

Your first question can only be answered by considering whether section 11 of the act of 1906 does deprive the Seminole tribal government of its right to disburse its own funds while the tribal government continues, a right which the Controller held was preserved in the agreement between the United States and the Seminoles, ratified July 1, 1898.

Under treaties of August 7, 1856, and March 21, 1866, the Seminoles are entitled to appropriations of $28,500 each year, being the interest at five per centum per annum on $570,000. Such appropriations are made from year to year. By the act of March 2, 1889 (25 Stat. 1004), it was provided that $1,500,000, a part of the price of lands purchased by the United States from the Seminoles, should remain in the Treasury and five per centum per annum thereon should be paid semiannually to the treasurer of the Seminole Nation. By the agreement which was ratified in the act of July 1, 1898 (30 Stat. 567), it was provided that:

> Five hundred thousand dollars ($500,000) of the funds belonging to the Seminoles, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five percent interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government, applied by the Secretary of the Interior to the support of Mekasuky and Emahaka Academies and the district schools of the Seminole people.

By the act of April 15, 1874 (18 Stat. 29), it was provided that the annual payment of $25,000 under the treaty of 1856 might be paid into the treasury of the Seminole Nation to be used as the council of the Nation should provide, if the tribe consented thereto and agreed to appropriate $5,000 annually for the school fund. This consent and agreement was given and made by the Seminoles.

An examination of the language in the first sentence in section 11 of the act of April 26, 1906,

supra, makes it clear that the revenues accruing to the tribes, which revenues are to be collected by an officer appointed by the Secretary of the Interior, do not include the interest on moneys of the Seminole tribe in the Treasury of the United States. By treaty, law, and agreement with the Seminoles such interest is required to be paid into the tribal treasury. Neither the act of 1906, nor earlier laws, make specific provision for the distribution of the interest money among the members of the tribe. There is, in my opinion, no authority in section 11 for the Secretary to make distribution of annuities arising from tribal funds to members of the Seminole tribe. Neither from the language of the section, nor by implication, can such authority be found. Nor is there authority in that section for the Secretary to apply such interest to the payment of any obligations except lawful claims against the tribe contracted after July 1, 1902, or for which warrants have been regularly issued. As to such claims and such warrants full authority is given to the Secretary of the Interior to use any fund in the United States Treasury belonging to the tribe to make payment, and that authority continues as to claims contracted or warrants issued prior to dissolution of the tribal government.

In answer to your first question, I am of the opinion that expenditures from the tribal funds, and distribution of annuities arising therefrom to members of the Seminole tribe should be made by the tribal authorities of the Seminole Nation, subject, however, to the approval of the President so far as required by section 28 of the act; and ex-

cept as the right and duty is devolved upon you to disburse so much of the funds as is necessary to carry out the requirements of section 11 as to payment of lawful claims and warrants, and to carry out the requirements of section 10 as to schools.

I answer your second question in the affirmative. Section 10 of the act of April 26, 1906, contains specific authority and direction for you to assume control and direction of the schools in the Seminole tribe, and to use the money of the tribe, invested or otherwise, in the Treasury of the United States, not exceeding in any one year the amount expended for the scholastic year ended June 30, 1905.

I have not overlooked the briefs you forwarded and the argument made by counsel for the Seminoles, that the treaties and agreements made by the United States are contracts which cannot be modified by Congress without the consent of the tribe, and that Congress cannot dispose of the moneys and property of the tribe at will.

I have not discust this question because, so far as the Controller is concerned, the plain requirements of the latest act of Congress are to be followed. Such an act may repeal an earlier act or a treaty. Whether the later act invades property rights of the tribe, or annuls contracts and confiscates Seminole property, as is contended, is not a question for my decision. Nor has the Controller authority to right such wrongs if they exist or give compensation therefor.

I have, however, given full weight to the principle that an Act of Congress should not be construed to repeal in whole or in part a treaty right

unless such a construction is required by the language used in such act.

I return the letters and papers which you transmitted.

Respectfully,

R. J. TRACEWELL,
Comptroller.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, July 12, 1898.

THE SECRETARY OF THE INTERIOR.

Sir: By your communication of July 9, 1898, I am asked for an opinion whether section 19 of an act of Congress approved June 28, 1898 (Public, No. 162), entitled "An act for the protection of the people of the Indian Territory, and for other purposes", applies to the Seminole Nation of Indians.

Said section is as follows:

> That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation.

It is submitted that until the passage of this act it had been the practice of this Department, under the laws and regulations then in force, to deposit "such funds" in bulk with the Assistant Treasurer of the United States, at St. Louis, to

the credit of the treasurers of "these tribes", to be disbursed by them in their own way, under the laws of their respective nations.

By the expression "such funds" and "these tribes", used in your communication, I take it is meant moneys due any of the five civilized tribes from the United States government. The practice of this Department, therefore, has been to deposit any moneys, subject to disbursement on account of these tribes, with the Assistant Treasurer, at St. Louis, to the credit of the treasurers thereof, to be disbursed by them without the further supervision of the government.

Section one of the act, *supra,* provides that the word "officer", where the same appears in the criminal laws theretofore extended over and put in force in the Indian Territory, shall include all officers "of the several tribes or nations of Indians in said Territory."

Section 2 authorizes and requires the Judge of a United States Court of any district in said Territory to make "any tribe" of Indians a party to any suit pending in his court where it appears that the property of such tribe is in any way affected by the issues being heard.

Section 3 confers jurisdiction on the United States district courts in said Territory to try cases against persons who claim to hold lands and tenements as members of a tribe, and whose membership is denied by the tribe, and provides that "if it be found upon trial that the same are held unlawfully against the tribe by those claiming to be members thereof, and the membership and right are disallowed by the commission to the *Five Tribes,* or the United States court * * * then

said court shall cause the parties charged with unlawfully holding said possessions to be removed from the same and cause the lands and tenements to be restored to the person or persons or nation or tribe of Indians entitled to the possession of the same."

Section 4 provides "That all persons who have heretofore made improvements on lands belonging to any one of the said tribes of Indians" may under certain conditions sell and dispose of the same.

Section 11 provides for the allotment of lands when the roll of citizenship of "any one of said nations or tribes" is fully completed.

Section 15 provides, "That there shall be a commission in each town for each one of the Chickasaw, Choctaw, Creek and Cherokee tribes", who shall cause to be surveyed and laid out townsites.

Section 16 makes it unlawful for any person to claim, demand, or receive any royalty or rents on any lands or property belonging to "any one of said tribes or nations in said Territory."

Section 17 provides that it shall be unlawful for "any citizen of any one of said tribes" to hold possession of more than his approximate share of the allotted lands.

It is apparent from these excerpts from the act that section 19 prohibits the payment by the United States of moneys on any account whatever to officers or tribal governments of *any* of the five civilized tribes.

The Seminole Indians as such are nowhere mentioned in the act, but these Indians constitute one of the five civilized tribes, and are within the inhibition of said section, unless, as to them, it has been repealed by subsequent legislation.

An act approved July 1, 1898 (Public, No. 172), ratified the agreement of December 16, 1897, between the Dawes Commission and the Seminole Nation of Indians. One of the stipulations of that agreement was, that:

> All moneys belonging to the Seminoles remaining after equalizing the value of allotments as herein provided, and reserving said sum of five hundred thousand dollars for school fund, shall be paid per capita to the members of said tribe in three equal instalments, the first to be made as soon as convenient, after allotment and extinguishment of the tribal government. Such payments shall be made by a person appointed by the Secretary of the Interior, who shall prescribe the amount of and approve the bond to be given by such person; and strict account shall be given to the Secretary of the Interior for such disbursements.

The act *supra,* which ratifies and confirms this agreement, repeals "all laws and parts of laws inconsistent therewith."

There is nothing in the language quoted inconsistent with the provisions of section 19 of the act of June 28, 1898, *supra.* Indeed, these provisions in the two acts are substantially the same. The provision in the Seminole act that "all moneys belonging to the Seminole Indians * * * shall be paid *per capita* to the members of said tribe", the first payment to be made after the "extinguishment of tribal government" "by a person appointed by the Secretary of the Interior", is the substantial equivalent of the language used in the general act that payments shall not be made "to any of the tribal governments or any officer thereof",

but shall be made per capita direct to each individual, "under direction of the Secretary of the Interior by an officer appointed by him."

I have therefore to advise that section 19 of the act of June 28, 1898, applies to the Seminole Nation of Indians. Moreover, it results from what has been hereinbefore said that whether that act applies or not, the manner of disbursement under the Seminole act must be the same.

Very respectfully,

WILLIS VAN DEVANTER,
Assistant Attorney General.

DEPARTMENT OF THE INTERIOR,
July 12, 1898.

Approved:
THOS. RYAN,
Acting Secretary.

CONGRESSIONAL RECORD, 55TH CONGRESS, 2ND SESSION, VOL. 31, PART IV, PAGE 3869 (APRIL 14, 1898)

As introduced, the Curtis Bill (H. R. 8581, 55th Congress) provided in Section 19 as follows:

> That no payment of any moneys on any account whatever shall hereafter be made to any of the tribal governments or to any officer thereof for disbursement, but payments of all expenses incurred in transacting their business and of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation.

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